

CCRB INVESTIGATIVE RECOMMENDATION

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|---|---|---------------------------|--|------------------------------------|--|
| Investigator: Souad Moussawi | Team: Team # 2 | CCRB Case #: 200913653 | <input type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input checked="" type="checkbox"/> Injury |
| Incident Date(s) Saturday, 08/29/2009 10:30 PM | Location of Incident: West 31st Street between Neptune and Mermaid | Precinct: 60 | 18 Mo. SOL 2/28/2011 | EO SOL 2/28/2011 | |
| Date/Time CV Reported Wed, 09/02/2009 12:20 PM | CV Reported At: CCRB | How CV Reported: Phone | Date/Time Received at CCRB Wed, 09/02/2009 12:20 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |

| Subject Officer(s) | Shield | TaxID | Command |
|---------------------|--------|--------|---------|
| 1. POM Joshua Konen | 00966 | 936882 | PSA 1 |
| 2. POM Robert Frank | 09271 | 940159 | PSA 1 |
| 3. POM Jimmy Correa | 24616 | 918835 | BKLN CT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|-------------------------|-----------|--------|----------|
| 1. POM Matthew Mikowski | 03925 | 939038 | PSA 1 |

| Officer(s) | Allegation | Investigator Recommendation |
|--------------------|---|-----------------------------|
| A.POM Joshua Konen | Abuse: PO Joshua Konen stopped § 87(2)(b) | |
| B.POM Jimmy Correa | Abuse: PO Jimmy Correa stopped § 87(2)(b) | |
| C.POM Robert Frank | Abuse: PO Robert Frank stopped § 87(2)(b) | |

Case Summary

§ 87(2)(b) filed the following complaint with the CCRB, via telephone, on September 2, 2009 (Encl.4A-B).

On August 29, 2009 at approximately 10:00 p.m. § 87(2)(b) was stopped by PO Joshua Konen, PO Jimmy Correa and PO Robert Frank on West 31st Street between Neptune Avenue and Mermaid Avenue in Brooklyn. The following actions resulted from the officers' actions:

- **Allegation A:** PO Joshua Konen stopped § 87(2)(b)
- **Allegation B:** PO Jimmy Correa stopped § 87(2)(b)
- **Allegation C:** PO Robert Frank stopped § 87(2)(b)

§ 87(2)(g)

Results of Investigation

Civilian Statement(s)

Complainant: § 87(2)(b)

- § 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on September 21, 2009 (Encl.5A-D). On August 29, 2009, at approximately 10:00 p.m., § 87(2)(b) was walking on West 31st Street between Neptune Avenue and Mermaid Avenue in Brooklyn, headed to a Chinese restaurant. § 87(2)(b) was carrying a juice bottle and wearing a long sleeve shirt, beige pants and a black stocking cap. He had money in his pocket, a pocket-sized bible and a cell phone on his waist. PO Joshua Konen, PO Jimmy Correa and PO Robert Frank approached § 87(2)(b) in an unmarked tan sedan. § 87(2)(b) identified PO Konen by reading his name from his badge and PO Correa and PO Frank were identified via the investigation. The passenger and the driver both exited the vehicle. The passenger attempted to grab § 87(2)(b)'s arm and § 87(2)(b) pulled away. The two other officers then grabbed § 87(2)(b) by the neck and pushed him onto a parked car. The officers then handcuffed § 87(2)(b) and turned him around. § 87(2)(b) did not notice that these males were police officers until they handcuffed him and turned him around. § 87(2)(b) then observed PO Konen's shield.

§ 87(2)(b) had his ID in the bible in his pocket. § 87(2)(b) did not recall which pocket it was in. An unidentified officer entered this pocket to retrieve his identification. § 87(2)(b) cannot identify this officer as his back was turned when this occurred. § 87(2)(b) began to loudly and repeatedly said, "These cops are harassing me. I didn't do anything. I work for the § 87(2)(b) I have a wife and two kids" in order to get attention. The officers explained to § 87(2)(b) that they stopped him because he fit the description provided during a call of a male who was suspected of having a gun. A marked van with two uniformed officers then arrived and § 87(2)(b) was placed in this van. These officers issued two summonses for disorderly conduct. There were many witnesses to this incident on West 31st Street but § 87(2)(b) does not know them personally.

Attempts to Contact Civilians

On November 9, 2009, the undersigned investigator conducted fieldwork at the location of the incident which is a residential block. Canvass letters were left at all the residences at the location. To date, no witnesses have come forward.

NYPD Statement(s):

Subject Officer: PO JOSHUA KONEN

- *PO Joshua Konen is a § 87(2)(b) white male. He is 6' tall and weighs 215 pounds.*
- *On August 29, 2009 PO Konen worked from 6:00 p.m. to 2:35 a.m. the following day. He worked with PO Correa and PO Frank in vehicle #§ 87(2)(b) PO Konen described this vehicle as a gray Crown Victoria. They were uniformed and assigned to anti-crime.*

Memo Book

PO Konen's memo book is summarized as follows: "10:29 p.m., radio call about male with gun, West 31 Street between Mermaid Avenue and Neptune Avenue, 10:31 p.m. male black fitting exact description, stop-and-frisk report prepared by PO Frank."

CCRB Testimony

PO Konen was interviewed at the CCRB on December 16, 2009(Encl.6A-D). On August 29, 2009 at approximately 9:30 p.m. PO Konen stopped § 87(2)(b) after receiving a call about a male matching his description with a gun. The call was traced to a payphone on West 31st Street and Neptune Avenue in Brooklyn. The call detailed that the individual was a black male wearing a black shirt and khaki pants. He was walking northbound on West 31st Street. PO Konen did not recall any information about where the gun was on the individual or how the caller knew that the individual a gun.

PO Konen, PO Correa and PO Frank exited their vehicle near § 87(2)(b) and approached him. PO Konen asked § 87(2)(b) if the officers could briefly speak to him. Immediately after being stopped, § 87(2)(b) became combative and aggressive. § 87(2)(b) said, "What the fuck are you stopping me for?" § 87(2)(b) was then against the patrol vehicle and PO Konen placed § 87(2)(b)'s hands against the vehicle and his body against the vehicle. § 87(2)(b) then became very "shifty". PO Konen described this as § 87(2)(b) trying to remove his hands from the vehicle. § 87(2)(b) was holding a bottle of juice and he threw the bottle. He also asked the officers to hit him saying he would "love it" if they did. § 87(2)(b) was then placed in handcuffs by all three officers. They did not grab him by the neck when restraining him. PO Konen described the force used as the minimum force necessary. § 87(2)(b) was then frisked by PO Konen around the waistband and his pockets. The frisk did not yield a weapon. PO Konen frisked § 87(2)(b) due to the 911 call information precisely matching § 87(2)(b) and § 87(2)(b)'s behavior. § 87(2)(b) was not searched. His identification was recovered but PO Konen did not recall the details of the recovery.

Subject Officer: PO ROBERT FRANK

- *PO Robert Frank is a § 87(2)(b) white male. He is 5'10" tall and weighs 225 pounds.*
- *On August 29, 2009 PO Frank worked from 6:00 p.m. to 2:35 a.m. the following day. He worked with PO Correa and PO Konen in an unmarked vehicle. They were uniformed and assigned to anti-crime.*

Memo Book

PO Frank's memo book is summarized as follows: "10:29 p.m. radio run regarding black male with gun at West 31st Street and Mermaid Avenue, wearing a doorag, black shirt and khaki pants. 10:31 p.m. One black male stopped regarding call, fits exact description, § 87(2)(b) § 87(2)(b) handcuffed, stop-and-frisk report prepared. 10:25 p.m. issued two summonses by conditions."

CCRB Testimony

PO Frank was interviewed at the CCRB on January 28, 2010(Encl.6E-H). PO Frank's statement was entirely consistent with the PO Konen's testimony with the exception of the following: PO Frank told § 87(2)(b) that he was being stopped regarding this call and asked to see § 87(2)(b)'s hands as § 87(2)(b) had them in his pockets. § 87(2)(b) then removed his hands from his pocket and became combative and aggressive by flailing his arms and cursing. He also threw a bottle which was on him. PO Frank then handcuffed § 87(2)(b) and frisked him due to fear for his safety from § 87(2)(b)'s behavior combined with the fact that he matched the description of the male described in the call. § 87(2)(b) was moving around while being frisked. During the interaction PO Frank asked § 87(2)(b) for identification and § 87(2)(b) explained that his ID was in his pocket and verbally gave PO Frank permission to enter the pocket to the remove the identification. PO Frank did so.

Subject Officer: PO JIMMY CORREA

- *PO Jimmy Correa is a § 87(2)(b) white male. He is 6'2" tall and weighs 230 pounds.*
- *On August 29, 2009 PO Correa worked from 6:00 p.m. to 2:35 a.m. the following day. He worked with PO Frank and PO Konen in RMP number § 87(2)(b). They were uniformed and assigned to anti-crime.*

Memo Book

PO Correa's memo book is summarized as follows: "10:20 p.m. the officers received a call about a man with a gun on West 31st and Mermaid Avenue, and at 10:31 p.m. a stop, question, and frisk report was prepared by PO Frank."

CCRB Testimony

PO Jimmy Correa was interviewed at the CCRB on January 28th, 2010 (Encl.6I-M). PO Correa's testimony was consistent with the statement provided by PO Frank.

Witness Officer: PO MATTHEW MIKOWSKI

- *PO Matthew Mikowski is a § 87(2)(b) white male. He is 6' tall and weighs 195 pounds.*
- *On August 29, 2009, PO Mikowski worked from 8:00 p.m. to 4:35 a.m. the following day. He was assigned to precinct conditions and worked with PO Pons and Sgt. McGee. They were in uniform and assigned to an unmarked van. PO Mikowski did not recall the description of this vehicle.*

Memo Book

PO Mikowski's memo book is summarized as follows: "10:30, responding to a call regarding a man on West 31 Street between Neptune Avenue and Mermaid Avenue with a gun. 10:35p.m., one male stopped in regards to call, male black, tan pants, black shirt, black doorag. 10:45 p.m., two summonses issued."

CCRB Testimony

PO Mikowski was interviewed at the CCRB on December 16, 2009(Encl.6N-R). PO Mikowski's statement was entirely consistent with the PO Konen's testimony with the exception of the following: PO Miskowski did not observe § 87(2)(b) being frisked or searched but knew that he was frisked because of the way he was acting. PO Mikowski did not frisk § 87(2)(b) or search him and did not know which officer frisked him. PO Mikowski issued § 87(2)(b) two summonses. The summonses were for obscene language and for causing a large crowd to form.

NYPD Document(s)

SPRINT and Communications CD

The SPRINT for this incident indicates that on August 29, 2009 at 10:30 p.m. there was a possible crime involving a male wearing a black durag, black shirt and beige pants who was walking down West 31st Street between Neptune Avenue and Mermaid Avenue (Encl.7A-B).

Summons/Arrest for Incident and Disposition

- On August 29, 2009, § 87(2)(b) received a disorderly conduct summons for obscene language and one for causing a crowd to form. Receipt of these summonses is pending and there is no record of them in the E-Courts database.

Status of Civil Proceedings

- § 87(2)(b) filed a Notice of Claim with the City of New York on October 7, 2009, claiming denial of civil rights, false arrest and battery and seeking twenty million dollars as redress (encl. 8A-B).

Civilian(s) Criminal History

- As of January 27, 2010, Office of Court Administration records reveal no criminal convictions for § 87(2)(b)

Civilian(s) CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (Encl.3).

Subject Officer(s) CCRB History

- PO Robert Frank has been a member of the service for 4 years and there are no substantiated CCRB allegations against him (Encl. 2B).

- PO Joshua Konen has been a member of the service for 5 years and there is one substantiated CCRB allegation against him (Encl. 2A).
- PO Jimmy Correa has been a member of the service for 12 years and there are no substantiated CCRB allegations against him (Encl. 2C).

Conclusion

Identification of Subject Officer(s)

PO Konen, PO Correa and PO Frank acknowledged interacting with § 87(2)(b)

Investigative Findings and Recommendations

- **Allegation A:** PO Joshua Konen stopped § 87(2)(b)
 - **Allegation B:** PO Jimmy Correa stopped § 87(2)(b)
 - **Allegation C:** PO Robert Frank stopped § 87(2)(b)
- § 87(2)(b) alleged that he was stopped by PO Konen, PO Correa and PO Frank. The officers acknowledged this stop, stating that § 87(2)(b) was stopped because he fit the description of a male described in a radio call alleged to have been carrying a gun. § 87(2)(b), § 87(2)(g)

Team: 2

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|---------------------|----------------|------------------|
| Investigator: _____ | Souad Moussawi | February 2, 2010 |
| Signature | Print | Date |
| Supervisor: _____ | _____ | _____ |
| Title/Signature | Print | Date |
| Reviewer: _____ | _____ | _____ |
| Title/Signature | Print | Date |
| Reviewer: _____ | _____ | _____ |
| Title/Signature | Print | Date |